

Senate Bill No. 1449

Passed the Senate August 29, 2012

Secretary of the Senate

Passed the Assembly August 27, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 10110.5, 10271, and 10292 of, and to add Section 10271.1 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1449, Calderon. Life insurance and annuities.

Existing law governs the business of insurance and defines various types of insurance for these purposes, including life insurance, and disability insurance. Existing law generally makes the requirements imposed on disability insurance contracts inapplicable to life insurance, endowment, and annuity contracts, or supplemental contracts thereto, that provide additional benefits in case of death or dismemberment or loss of sight by accident, operate to safeguard contracts against lapse, or give a special surrender value, a special benefit, or an annuity, if the insured or annuitant becomes totally and permanently disabled.

This bill would instead make those provisions inapplicable to provisions and supplemental contracts that operate to safeguard against lapse, or give a special surrender benefit if the owner, insured, or annuitant, meets certain benefit triggers. The bill would specify that the provisions or supplemental contracts that operate to safeguard life insurance contracts against lapse are defined as a waiver of a premium benefit or monthly deduction benefit when the insured becomes totally disabled, as specified, and would define the term "special surrender benefit" for purposes of those provisions. The bill would require those provisions and supplemental contracts to contain certain provisions, including information on giving notice of a claim. The bill would authorize a contract or supplemental contract issued by an admitted life and disability insurer to contain a provision for a waiver of a special surrender benefit for a life insurance or annuity contract in the event of voluntary or involuntary unemployment of the owner, insured, or annuitant.

Existing law requires a supplemental contract described above, or, if the supplemental contract is an integral part of a contract of life insurance the entire contract, to be submitted to the Insurance

Commissioner for approval, and prohibits the commissioner from approving a contract under certain circumstances, including if the contract contains any provision that is likely to mislead a person to whom the policy is offered, delivered, or issued.

This bill would require, if a supplemental contract is an integral part of an annuity contract, the entire contract to be submitted to the commissioner for approval. The bill would specify that a provision or supplemental contract that operates to safeguard a life insurance contract from lapse or includes a special surrender benefit shall be considered an integral part of a contract and would require the insurer to submit, for information purposes, a sample copy of the life insurance or annuity contract with which the supplemental contract will be used in order to facilitate the review of the supplemental contract. The bill would prohibit a provision or supplemental contract that contains any title, description, or any other indication that would describe or imply that the policy or supplemental contract provides long-term care coverage, and would require a provision or supplemental contract to specify any applicable exclusions, which the bill would limit, as provided.

The people of the State of California do enact as follows:

SECTION 1. Section 10110.5 of the Insurance Code is amended to read:

10110.5. (a) A policy or endorsement issued by an admitted life and disability insurer may contain a provision for a waiver of premium payments in the event of involuntary unemployment of the insured. Insurers issuing policies or endorsements which contain that provision shall establish any additional reserves and file any additional financial reports that the commissioner may require.

(b) A contract or supplemental contract issued by an admitted life and disability insurer may contain a provision for a waiver of special surrender benefit for a life insurance or annuity contract in the event of voluntary or involuntary unemployment of the owner, insured, or annuitant, as applicable. Insurers issuing contracts or supplemental contracts which contain that provision shall establish any additional reserves and file any additional financial reports that the commissioner may require.

SEC. 2. Section 10271 of the Insurance Code is amended to read:

10271. (a) Except as set forth in this section, this chapter shall not apply to, or in any way affect, provisions in life insurance, endowment, or annuity contracts, or contracts supplemental thereto, that provide additional benefits in case of death or dismemberment or loss of sight by accident, or that operate to safeguard those contracts against lapse, as described in subdivision (a) of Section 10271.1, or give a special surrender benefit, as defined in subdivision (b) of Section 10271.1, or a special benefit, in the event that the owner, insured, or annuitant, as applicable, meets the benefit triggers specified in the life insurance or annuity contract or supplemental contract.

(b) (1) A provision or supplemental contract described in subdivision (a) shall contain all of the provisions set forth in paragraph (2). However, an insurer, at its option, may substitute for one or more of the provisions a corresponding provision of different wording approved by the commissioner that is not less favorable in any respect to the owner, insured, or annuitant, as applicable. The provisions required by paragraph (2) shall be preceded individually by the appropriate caption, or, at the option of the insurer, by the appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) With respect to the benefit standards described in subdivisions (a) and (b) of Section 10271.1, the following requirements apply to the supplemental contracts with these benefits:

(A) Either the contract or supplemental contract shall provide that the contract and the supplemental contract constitute the entire insurance or annuity contract consistent with paragraph (7) of subdivision (c) of Section 2534.3 of Title 10 of the California Code of Regulations, and shall also provide that no agent has the authority to change the contract or to waive any of its provisions. This requirement applies without regard to whether the contract is a variable or nonvariable contract, or a group or individual contract. This provision shall be preceded individually by a caption stating “ENTIRE CONTRACT; CHANGES:” or other appropriate caption as the commissioner may approve.

(B) Either the contract or supplemental contract shall provide for reinstatement consistent with paragraph (3) of subdivision (c)

of Section 2534.3 of Title 10 of the California Code of Regulations. This requirement applies without regard to whether the contract is a variable or nonvariable contract, or a group or individual contract. This provision shall be preceded individually by a caption stating “REINSTATEMENT:” or other appropriate caption as the commissioner may approve.

(C) Supplemental contracts subject to underwriting shall include an incontestability statement that provides that the insurer shall not contest the supplemental contract after it has been in force during the lifetime of the insured for two years from its date of issue, and may only be contested based on a statement made in the application for the supplemental contract, if the statement is attached to the contract. The statement upon which the contest is made shall be material to the risk accepted or the hazard assumed by the insurer. This provision shall be preceded individually by a caption stating “INCONTESTABLE:” or other appropriate caption as the commissioner may approve.

(D) A provision or supplemental contract described in subdivision (a) shall also include:

(i) **NOTICE OF CLAIM:** The insurer may require written notice of claim no less than 20 days after an occurrence covered by the provision or supplemental contract, or commencement of any loss covered by the provision or supplemental contract. Notice given by or on behalf of the insured or the beneficiary, as applicable to the insurer at the insurer’s address or telephone number, or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(ii) **CLAIM FORMS:** The insurer, upon receipt of a notice of claim, shall furnish to the claimant such forms as are usually furnished by it for filing a proof of occurrence or a proof of loss. If the forms are not furnished within 15 days after giving notice, the claimant shall be deemed to have complied with the requirements of the provision or supplemental contract as to proof of occurrence or proof of loss upon submitting, within the time fixed in the provision or supplemental contract for filing proof of occurrence or proof of loss, written proof covering the character and the extent of the occurrence or loss.

(iii) **PROOF OF LOSS:** The insurer may require that the insured provide written proof of occurrence or proof of loss no less than 90 days after the termination of the period for which the insurer

is liable, and, in the case of claim for any other occurrence or loss, within 90 days after the date of the occurrence or loss. Failure to furnish proof within the time required shall not invalidate or reduce the claim if it was not reasonably possible to give proof within the time, provided proof is furnished as soon as reasonably possible and, except in the absence of legal capacity, no later than one year from the time proof is otherwise required.

(iv) **PHYSICAL EXAMINATIONS:** The insurer, at its own expense, shall have the right and opportunity to examine the person of the insured when and as often as the insurer may reasonably require during the pendency of a claim.

(c) The commissioner shall review contracts and supplemental contracts to ensure that the language can be readily understood and interpreted, and shall not approve any contract or supplemental contract for insurance or delivery in this state if the commissioner finds that the contract or supplemental contract does any of the following:

(1) Contains any provision, label, description of its contents, title, heading, backing, or other indication of its provisions that is unintelligible, uncertain, ambiguous, or abstruse, or likely to mislead a person to whom the contract or supplemental contract is offered, delivered, or issued.

(2) Constitutes fraud, unfair trade practices, and insurance economically unsound to the owner, insured, or annuitant, as applicable.

(d) A provision or supplemental contract described in subdivision (a) shall not contain any title, description, or any other indication that would describe or imply that the policy or supplemental contract provides long-term care coverage.

(e) Commencing two years from the date of the issuance of the provision or supplemental contract, no claim for loss incurred or disability, as defined in the provision or supplemental contract, may be reduced or denied on the grounds that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date on the coverage of the provision or supplemental contract.

(f) With regard to benefits set forth in Section 10271.1, the provisions and supplemental contracts shall specify any applicable exclusions, which shall be limited to the following:

(1) Total disability caused or substantially contributed to by any attempt at suicide or intentionally self-inflicted injury, while sane or insane.

(2) Total disability caused or substantially contributed to by war or an act of war, as defined in the exclusion provisions of the contract.

(3) Total disability caused or substantially contributed to by active participation in a riot, insurrection, or terrorist activity.

(4) Total disability caused or substantially contributed to by committing or attempting to commit a felony.

(5) Total disability caused or substantially contributed to by voluntary intake of either:

(A) Any drug, unless prescribed or administered by a physician and taken in accordance with the physician's instructions.

(B) Poison, gas, or fumes, unless they are the direct result of an occupational accident.

(6) Total disability occurring after the policy anniversary or supplemental contract anniversary, as applicable and as defined in the policy or supplemental contract, on which the insured attains a specified age of no less than 65.

(7) Total disability in consequence of the insured being intoxicated, as defined by the jurisdiction where the total disability occurred.

(8) Total disability caused or materially contributed to by engaging in an illegal occupation.

(g) If the commissioner notifies the insurer, in writing, that the filed form does not comply with the requirements of law and specifies the reasons for his or her opinion, it is unlawful for an insurer to issue any policy in that form.

SEC. 3. Section 10271.1 is added to the Insurance Code, to read:

10271.1. (a) (1) Provisions or supplemental contracts that operate to safeguard life insurance contracts against lapse are defined as a waiver of premium benefit or a waiver of monthly deduction benefit, as applicable, in which the insurer waives the premium or monthly deduction for a life insurance contract when the insured becomes totally disabled, as defined in the contract or supplemental contract, and where the waiver continues until the end of the insured's disability, or until the attainment of an age established by the insurer.

(2) For purposes of this subdivision, total disability shall not be less favorable to the insured than the following:

(A) During the first 24 months of total disability, the insured is unable to perform with reasonable continuity the substantial and material duties of his or her job due to sickness or bodily injury.

(B) After the first 24 months of total disability, the insured, due to sickness or bodily injury, is unable to engage with reasonable continuity in any other job in which he or she could reasonably be expected to perform satisfactorily in light of his or her age, education, training, experience, station in life, or physical and mental capacity.

(3) The definition of total disability may also include presumptive total disability, such as the insured's total and permanent loss of sight of both eyes, hearing of both ears, speech, the use of both hands, both feet, or one hand and one foot.

(4) The insurer may require total disability to continue for an uninterrupted period of time specified in the contract or supplemental contract, or the insurer may allow separate periods of disability to be combined.

(5) The waiver of premium or monthly deduction benefit shall continue for the period specified in the contract or supplemental contract, but shall not be less favorable to the insured than the following:

(A) If the insured's total disability begins before the insured attains 60 years of age, the insurer shall waive all premiums or monthly deductions due for the period of the total disability, and if the total disability extends to the insured's attainment of 65 years of age, the insurer shall waive all further premiums or monthly deductions due.

(B) If the insured's total disability begins after the age specified in subparagraph (A), the insurer shall waive all premiums or monthly deductions due for the period that the insured continues to be totally disabled up to 65 years of age.

(b) "Special surrender benefit" is defined as a "waiver of surrender charge benefit" wherein the insurer waives the surrender charge usually charged for a withdrawal of funds from the cash value of a life insurance contract or the account value of an annuity contract if the owner, insured, or annuitant, as applicable, meets any of the following criteria:

(1) Develops any medical condition where the owner's, insured's, or annuitant's life expectancy is expected to be less than or equal to a limited period of time that shall not be restricted to a period of less than 12 months or greater than 24 months.

(2) Is receiving, as prescribed by a physician, registered nurse, or licensed social worker, home care or community-based services, as defined in subdivision (a) of Section 10232.9, or is confined in a skilled nursing facility, convalescent nursing home, or extended care facility, which shall not be defined more restrictively than as in the Medicare program, or is confined in a residential care facility or residential care facility for the elderly, as defined in the Health and Safety Code. Out-of-state providers of services shall be defined as comparable in licensure and staffing requirements to California providers.

(3) Has any medical condition that would, in the absence of treatment, result in death within a limited period of time, as defined in the provision or supplemental contract, but that shall not be restricted to a period of less than six months.

(4) Is totally disabled, as follows:

(A) During the first 24 months of total disability, the owner, insured, or annuitant, as applicable, is unable to perform with reasonable continuity the substantial and material duties of his or her job due to sickness or bodily injury.

(B) After the first 24 months of total disability, the owner, insured, or annuitant, as applicable, due to sickness or bodily injury, is unable to engage with reasonable continuity in any other job in which he or she could reasonably be expected to perform satisfactorily in light of his or her age, education, training, experience, station in life, or physical and mental capacity.

(C) The definition of total disability may also include presumptive total disability, such as the insured's total and permanent loss of sight of both eyes, hearing of both ears, speech, the use of both hands, both feet, or one hand and one foot.

(D) The insurer may require the total disability to continue for an uninterrupted period of time specified in the contract or supplemental contract, or the insurer may allow separate periods of disability to be combined.

(5) Has a chronic illness as defined pursuant to either subparagraph (A) or (B):

(A) Either of the following:

(i) Impairment in performing two out of seven activities of daily living, as set forth in subdivisions (a) and (g) of Section 10232.8, meaning the insured needs human assistance, or needs continual substantial supervision.

(ii) The insured has an impairment of cognitive ability, meaning a deterioration or loss of intellectual capacity due to mental illness or disease, including Alzheimer's disease or related illnesses, that requires continual supervision to protect oneself or others.

(B) Either of the following:

(i) Impairment in performing two out of six activities of daily living as described in subdivisions (b), (d), (e), and (f) of Section 10232.8 due to a loss of functional capacity to perform the activity.

(ii) Impairment of cognitive ability, meaning the insured needs substantial supervision due to severe cognitive impairment, as described in subdivisions (b) and (e) of Section 10232.8.

(6) Has become involuntarily or voluntarily unemployed.

SEC. 4. Section 10292 of the Insurance Code is amended to read:

10292. (a) A supplemental contract described in Section 10271 shall not be delivered or issued for delivery to any person in this state until a copy of the form thereof is submitted to, and approved by, the commissioner. If the supplemental contract is an integral part of a contract of life insurance or annuity, the entire contract shall be submitted to the commissioner, but his or her power of approval or disapproval is limited to the supplemental portion and any other portions that relate to the supplemental portion.

(b) A supplemental contract described in Section 10271.1 shall be considered an integral part of a contract for purposes of this section. To facilitate the review of a supplemental contract, the insurer shall submit, for informational purposes, a sample copy of the life insurance or annuity contract with which the supplemental contract will be used. To facilitate the location of the required provisions as stated in paragraph (2) of subdivision (b) of Section 10271, the insurer shall provide the sample copy page reference for the provisions that appear in the contract.

(c) The commissioner may adopt reasonable rules and regulations as are necessary to administer and carry out the purposes of Sections 10271 and 10271.5, and this section.

Approved _____, 2012

Governor